

REMARKS

There exist two criteria for a proper requirement between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed, and (2) there must be a serious burden on the examiner if restriction is required. MPEP § 803. If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it may include claims to independent or distinct inventions. MPEP § 803.

The Office previously examined and ultimately allowed Claims 2-20. See, Notice of Allowance mailed April 25, 2002. In response, Applicant properly filed a continued prosecution application (CPA) on July 24, 2002. The Office again examined and allowed Claims 2-20. See, Notice of Allowance mailed October 21, 2003. In response, the Applicant properly filed a request for continued examination (RCE) on January 21, 2004 that included an amendment to the drawings. The Office again examined and allowed Claims 2-20. See, Notice of Allowance mailed April 20, 2004. In response, Applicant properly filed another RCE on July 20, 2004 that included an information disclosure statement. No amendments to the Claims 2-20 have been made since the first notice of allowance was issued.

As a result of this prior prosecution of the application, the Office has, on three separate occasions, fully examined and allowed Claims 2-20. No restriction requirement was ever made with respect to Claims 2-20 and, therefore, the Office's prior conduct in fully examining Claims 2-20 is conclusive in that these claims are not properly the subject of a restriction requirement and are not independent or distinct.

Though Applicant is cognizant that the Examiner may establish *prima facie* a serious burden on the Examiner if the Examiner properly shows separate classification, or separate status in the art, or a different field of search, this *prima facie* shown may be rebutted. As such, the Office's full examination and allowance of Claims 2-20 on at least three separate occasions rebuts any *prima facie* showing since the Office did, in fact, fully examine and allow these claims. Applicant respectfully submits that it is untenable for the Office to examine and allow these Claims 2-20 in three separate examinations, and now, to assert that examination of these claims presents a serious burden on the Examiner.

Accordingly, Applicant respectfully requests withdrawal of the restriction requirement and examination and allowance of Claims 2-20.

Applicant provisionally elects the claims of Group I, claims 2-10 and 13-20, again, with traverse.

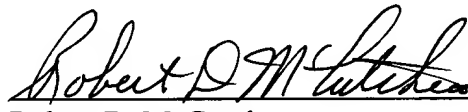
If any issue arises, or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@davismunck.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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